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BOOK REVIEWS

Handbook of Partnership Taxation. By Arthur B. Willis. New York: Prentice-Hall, Inc. 1957. Pp. xviii, 585. \$15.00.

An attorney who drafts a partnership agreement, a sale of a partnership interest and other partnership contracts, or who advises on partnership matters like the liquidation of a partnership cannot render adequate services unless he either has an understanding of the structure, theory, objectives and deficiencies of Subchapter K of the 1954 Internal Revenue Code on "Partners and Partnerships" or the ability to analyze and apply the relevant provisions to his problem. Despite his training as attorney and certified public accountant and a broad background in business, tax practice and professional activities like participation in institutes on taxation and chairmanship of the Section on Taxation of the American Bar Association, Mr. Arthur B. Willis, author of *Handbook of Partnership Taxation*, admits that it is difficult to understand the partnership provisions of the 1954 Code and to grasp and apply their theories.¹

The author's statement that the *Handbook of Partnership Taxation* was written primarily for use by the practicing attorney or accountant does not justify the conclusion that his sole interest is in explaining the operation and effects of the new partnership provisions. The book gives historical perspective by at least summary treatment of the prior law and practice, makes a critical analysis of the new statutory provisions and regulations and submits criticisms and suggestions for changes in the 1954 Code. In addition to an explanation of the theory and application of the new partnership provisions, the author explains financial effects by examples of tax accounting. Thus, in outlining the meaning and application of the new partnership provisions the author gives a critical evaluation of their utility.

The replacement of the nine short articles of the 1939 Code and a meager judicial development of the law applicable to partnership taxation with the full coverage of subchapter K, which contains many complexities, makes the value of a treatise on the new law depend largely on the original analysis and broad experience of the author. The author's explanation of the theories of the new statutory provisions, his testing of their application to customary business transactions, and his visualization of loopholes and traps that can result in favorable or harmful un- contemplated tax effects makes the *Handbook of Partnership Taxation*

¹ WILLIS, *HANDBOOK OF PARTNERSHIP TAXATION*, p. iv. (1957).

a most valuable book for attorneys, accountants, and law teachers. The practical advice and discussion contained in only the last five chapters (27-31) relating to valuation of partnership interests, use of life insurance in buy and sell agreements, the family partnership, income tax problems of the professional partnership, and the partnership or corporation problem will justify a lawyer in owning *Partnership Taxation*.

The printing of subchapter K of the Internal Revenue Code in the appendix facilitates study of the new provisions and the checking of the author's analysis against the Code. The partnership-agreement forms and miscellaneous partnership provisions in the appendix and the accompanying explanations and cross-references to relevant parts of the text will prove most useful to an attorney in drafting a partnership agreement based on a thorough consideration of the tax effects of the new law. Mr. Willis embodies in his partnership-agreement forms a statement of the basic accounting under the terms of the agreement for the purpose of clarifying the task of accountants in keeping records that reflect the legal relations established by the agreement.

Two additional practical aids probably would increase the utility of *Partnership Taxation* for busy attorneys who can devote only a limited part of their time to the study and practice of tax law. A check list of information that must be elicited from clients who desire to form a partnership, alternative provisions and their tax effects that must be explained, and similar tax considerations in negotiating and drafting a partnership agreement should facilitate an attorney's work despite the fact that the partnership forms and accompanying explanations in the appendices will enable him to prepare his own check list.

It seems that an attorney who has drafted a partnership agreement should warn his clients that certain transactions like trades between partners, sales and exchanges of partnership interests, distributions of partnership property, changes in tax years and elections involve tax and other legal problems that require consideration prior to action or the making of an agreement. Differences between tax law and charter provisions required by state law² also present a problem that should be brought to the attention of the new partners.

"The follow-through on operations" idea for family partnerships is carefully developed by Mr. Willis in section 29.16.³ A similar treatment of the general follow-through problem either in text form or by the suggested letter to the new partners warning them of the necessity of obtaining advice prior to certain types of action or agreements would have increased the utility of *Partnership Taxation*. The principal complexities of the new partnership provisions apply largely to some of the

² See *id.*, art. X-B, at 504, and the discussion of art. X at 525-26.

³ *Id.* at 448-50.

special transactions that would form the subject of the suggested warning rather than to the usual business operations as a partnership.

Mr. Willis notes that the legal costs involved in the formation of a partnership are likely to be substantial,⁴ but he fails to advise us concerning the accounting costs incident to the more complex partnership transactions. It surely would seem appropriate to advise the client to consider both the legal and accounting costs incident to the complex partnership taxation problems.

Our techniques of drafting tax statutes and of explaining their meaning and operation can be greatly improved. As illustrated by the author's able criticism of the deficiencies of the mechanical percentage tests of section 751 that were adopted from the American Law Institute's recommendations, nationally recognized attorneys have sponsored faulty tax legislation. Our legal writers find difficulty in discussing the factors that explain the financial effects of tax statutes. Consequently, there is a tendency to let illustrations and examples of tax accounting replace a development of the ideas that cause the tax effects illustrated by the examples. The publishers of tax materials and the editors of legal periodicals should encourage authors to present their ideas in a form that enables the reader to make an easy separation of general ideas and analyses of both legal principles and accounting factors from the details of illustrative accounting examples. A failure to make a sharp separation of the general discussion from examples is likely to be accompanied by a failure to develop and discuss some of the general ideas applicable to the problem under consideration. Some of the accounting illustrations and other examples in *Partnership Taxation* will prove burdensome to lawyers, but the general analysis and discussion usually give the principal ideas in which the reader is interested.

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Prentice-Hall Corporation Guide. By Prentice-Hall Staff. New York: Prentice-Hall, Inc. 1957. Loose Leaf Service (two volumes). \$85.50 (includes one year's service). Annual service \$66.00.

The lawyer with a moderate to large following of corporate clients—particularly ones whose activities include business transactions in one or more states other than the state of incorporation—will find the *Prentice-Hall Corporation Guide* a useful addition to his library.

General text treatment is accorded a variety of subjects ranging from basic concepts in the law or corporations through price discrimination

⁴ See *id.* § 205, at 26.

and fair trade. There are extensive case references in the footnotes; however, very few North Carolina cases were included. This is probably for two reasons: (1) North Carolina is not usually referred to as one of the principal incorporating states and thus has not been faced with any great volume of corporate litigation; and (2) the new Business Corporation Act, by repealing the old Corporation Laws chapter, made obsolete many of the decisions involving statutory interpretations.

The primary usefulness of the *Guide* will probably be found in the checklists and the forms and ideas sections. Checklists are provided for organization, management, financing, and reorganization and liquidation. In connection with these problems are suggested records and forms covering such matters as agreements, resolutions, notices, etc. A separate section is devoted to checklists of pertinent statutory provisions in each state with a companion section outlining taxes applicable to corporations and procedures for qualifying a foreign corporation. It might be noted, incidentally, that in the set reviewed the information concerning qualification in North Carolina had not been corrected to conform with the new Business Corporation Act.

"New Forms and Ideas" is devoted to discussion of business, corporate, and tax saving ideas and suggested forms and records designed to effectuate them. This section will, of itself, perhaps, justify acquisition of the *Guide* by the practitioner with a large volume of corporate work. The ideas and forms set out will be found to apply primarily to sizable corporations and, for the most part, cover situations not present in the small or closely held corporation. A variety of tax tips are included along with subjects ranging from the jury duty problem to liquidation. The "Report Bulletins," issued bi-weekly, supplement the section with timely reports on new developments and ideas. Current court decisions and rulings relating to corporation law are reported in a section entitled "New Matter."

By specific subscription, statutes of any or all of the states may be included in the *Guide*. Under "North Carolina" is included the Business Corporation Act and other statutes relating to corporations. Annotations cover opinions of the Attorney General as well as court decisions. The index to this matter is far superior to any other known by the reviewer.

Both the careful student of corporation law and the busy practitioner, to whom time is at a premium, will find the *Prentice-Hall Corporation Guide* a useful and valuable tool.

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